

No. 12527

Docketed

United States
Court of Appeals
for the Ninth Circuit.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION and INTER-
NATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, LOCAL 16,
Appellants,

vs.

JUNEAU SPRUCE CORPORATION, a Corpo-
ration,
Appellee.

SUPPLEMENTAL
Transcript of Record

Appeal from the District Court
for the Territory of Alaska
Division Number One.

FILED

SEP 25 1950

PAUL P. O'BRIEN, CLERK

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SUPPLEMENTAL
Transcript of Record

Appeal from the District Court
for the Territory of Alaska
Division Number One.

In the District Court for the Territory of Alaska,
Division Number One, at Juneau

No. 5996-A

JUNEAU SPRUCE CORPORATION, a Corporation,

Plaintiff,

vs.

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, an Unincorporated Association, and INTERNATIONAL
LONGSHOREMEN'S & WAREHOUSE-
MEN'S UNION, LOCAL 16, an Unincorporated Association,

Defendants.

COURT'S SUPPLEMENTARY INSTRUCTIONS TO THE JURY

No. 1

Ladies and Gentlemen of the Jury, it is your duty to come to an agreement if you can conscientiously do so. If a large number or majority of the jury is of a certain opinion, the dissenting jurors should carefully consider whether their doubts or differences are reasonable. In most cases absolute certainty cannot be attained and, hence, the minority should listen with a disposition to be convinced to the arguments of the majority.

The plaintiff, defendants and Court have performed their respective duties. Justice to both the

plaintiff and the defendants requires that if possible there be no disagreement necessitating a retrial with all the attendant expense and delay.

You are particularly cautioned against allowing yourselves to be influenced by prejudice or anything other than the evidence and the instructions. Your attention is again directed to Instruction Nos. 1, 12 and 13 in regard to your duties.

No. 2

The issues in this case are simple and few. You are instructed that it is uncontradicted that the members of Local 16 engaged in a concerted refusal in the course of their employment to transport or otherwise handle or work on lumber of plaintiff or to perform any services for plaintiff and that this was for the purpose of forcing and requiring the plaintiff to assign the work of loading its barges with its lumber to members of Local 16 rather than to other persons to whom said work had theretofore been assigned.

The only issues, therefore, which remain for your consideration are whether damages proximately resulted from such concerted refusal and whether the International engaged in this concerted refusal to transport or otherwise handle or work on lumber of plaintiff or to perform any services for plaintiff. Whether it did so engage depends on what its officers and agents did. If you find that the International, acting through its officers and agents, induced Local 16 or any other of its Locals to en-

gage in such concerted refusal, the International would be equally liable.

No. 3

With reference to the liability of Local 16 and the International for the acts of its agents and whether their agents acted within the scope of their employment, you are further instructed that, if you find from a preponderance of the evidence that the agents of the defendants decided that the defendants, or either of them, should engage in a concerted refusal in the course of their employment to transport or otherwise handle or work on lumber of plaintiff or to perform any services for plaintiff and that thereafter Local 16 and International became engaged in such a refusal, this would constitute a ratification of the acts of their agents, and it would then be unnecessary to determine whether such acts of their agents were within the scope of their employment. In other words, labor organizations are liable not only for the acts of their officers or agents done within the scope of their authority or employment but also for the acts done outside of the scope of their authority and employment which they thereafter ratify.

Ratification takes place where the principal, with full knowledge of the acts of the officer or agent, approves or adopts such acts or accepts the benefits thereof.

In this case Local 16, by engaging in the concerted refusal aforesaid, ratified the previous acts

of its officers and agents and, hence, there is no issue for you to decide as to Local 16.

No. 4

In determining the scope of employment of the officers and agents of International you should consider all the evidence, oral and documentary, in order to ascertain the power and authority of International and its relationship to its Locals, and particularly whether it counsels, advises, intercedes on behalf of, or acts for its Locals or is obligated under its constitution to do so in labor disputes, whether its Locals or the International itself makes the decision to call a strike or engage in a concerted refusal such as the kind here dealt with, and whether thereafter the International calls or is empowered to call upon its Locals to join in such strike or concerted refusal to work, as well as all the other facts and circumstances in the case.

Upon determining the power and authority of the International in such matters, you will then be in a position to determine the scope of employment and authority of its officers and agents. Ordinarily the question whether a certain act is within the scope of employment of an agent of a labor union arises only where the act itself appears to be foreign to or bear but a slight relationship to the employment itself as where, for example, one engaged in picketing injures a person attempting to cross the picket line or damages property. Here the acts alleged are not of that kind. In determining the scope of authority and employment of officers and

agents of International you may consider whether their acts were related to the power and authority of International, the character of such employment, the nature of the act or acts alleged, particularly with reference to whether such act or acts are such as are usually done in labor disputes, and whether the act or acts were for the benefit or in the prosecution of the business of the International, remembering however that an act may be unlawful and still be within the scope of the employment or authority of the agent.

[Endorsed]: Filed District Court, Territory of Alaska, 1st Division, May 13, 1949.

[Endorsed]: No. 12527. United States Court of Appeals for the Ninth Circuit. International Longshoremen's & Warehousemen's Union, Appellant, vs. Juneau Spruce Corporation, a Corporation, Appellee. Supplemental Transcript of Record. Appeal from the District Court for the Territory of Alaska, Division Number One.

Filed July 29, 1950.

PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

